

AMENDED IN ASSEMBLY AUGUST 18, 2014

AMENDED IN ASSEMBLY JUNE 26, 2014

AMENDED IN SENATE MAY 6, 2014

**SENATE BILL**

**No. 1255**

---

**Introduced by Senator Cannella**

**(Coauthor: Senator Huff)**

(Coauthors: Assembly Members Garcia, Gonzalez, Jones, and  
Wieckowski)

February 20, 2014

---

An act to amend Section 647 of the Penal Code, relating to disorderly conduct.

LEGISLATIVE COUNSEL'S DIGEST

SB 1255, as amended, Cannella. Disorderly conduct: unlawful distribution of image.

Existing law provides that any person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress, is guilty of disorderly conduct.

This bill would instead provide that a person who intentionally distributes an image, as described, of the intimate body part or parts, as defined, of another identifiable person, or an image of the person depicted engaging in specified sexual acts, under circumstances in which the persons agree or understand that the image remain private, the person distributing the image knows or should know that distribution of the

image will cause serious emotional distress, and the person depicted suffers that distress, is guilty of disorderly conduct. The bill would also provide that it is not a violation of this provision to distribute the image under certain circumstances, including where the distribution is made in the course of reporting an unlawful activity. The bill makes other technical and clarifying changes.

Because this bill would broaden the scope of a crime, it would impose a state-mandated local program.

*The bill would incorporate additional changes to Section 647 of the Penal Code made by AB 1791 or SB 1388 that would become operative if either bill is chaptered on or before January 1, 2015, and this bill is chaptered last.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 647 of the Penal Code is amended to  
2 read:  
3 647. Except as provided in subdivision (l), every person who  
4 commits any of the following acts is guilty of disorderly conduct,  
5 a misdemeanor:  
6 (a) Who solicits anyone to engage in or who engages in lewd  
7 or dissolute conduct in any public place or in any place open to  
8 the public or exposed to public view.  
9 (b) Who solicits or who agrees to engage in or who engages in  
10 any act of prostitution. A person agrees to engage in an act of  
11 prostitution when, with specific intent to so engage, he or she  
12 manifests an acceptance of an offer or solicitation to so engage,  
13 regardless of whether the offer or solicitation was made by a person  
14 who also possessed the specific intent to engage in prostitution.  
15 No agreement to engage in an act of prostitution shall constitute  
16 a violation of this subdivision unless some act, in addition to the  
17 agreement, is done within this state in furtherance of the  
18 commission of an act of prostitution by the person agreeing to

engage in that act. As used in this subdivision, “prostitution” includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f), a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. A person who has been placed in civil protective custody shall not thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f).

1 (3) Any person who a peace officer in good faith believes will  
2 attempt escape or will be unreasonably difficult for medical  
3 personnel to control.

4 (h) Who loiters, prowls, or wanders upon the private property  
5 of another, at any time, without visible or lawful business with the  
6 owner or occupant. As used in this subdivision, “loiter” means to  
7 delay or linger without a lawful purpose for being on the property  
8 and for the purpose of committing a crime as opportunity may be  
9 discovered.

10 (i) Who, while loitering, prowling, or wandering upon the private  
11 property of another, at any time, peeks in the door or window of  
12 any inhabited building or structure, without visible or lawful  
13 business with the owner or occupant.

14 (j) (1) Any person who looks through a hole or opening, into,  
15 or otherwise views, by means of any instrumentality, including,  
16 but not limited to, a periscope, telescope, binoculars, camera,  
17 motion picture camera, camcorder, or mobile phone, the interior  
18 of a bedroom, bathroom, changing room, fitting room, dressing  
19 room, or tanning booth, or the interior of any other area in which  
20 the occupant has a reasonable expectation of privacy, with the  
21 intent to invade the privacy of a person or persons inside. This  
22 subdivision shall not apply to those areas of a private business  
23 used to count currency or other negotiable instruments.

24 (2) Any person who uses a concealed camcorder, motion picture  
25 camera, or photographic camera of any type, to secretly videotape,  
26 film, photograph, or record by electronic means, another,  
27 identifiable person under or through the clothing being worn by  
28 that other person, for the purpose of viewing the body of, or the  
29 undergarments worn by, that other person, without the consent or  
30 knowledge of that other person, with the intent to arouse, appeal  
31 to, or gratify the lust, passions, or sexual desires of that person and  
32 invade the privacy of that other person, under circumstances in  
33 which the other person has a reasonable expectation of privacy.

34 (3) (A) Any person who uses a concealed camcorder, motion  
35 picture camera, or photographic camera of any type, to secretly  
36 videotape, film, photograph, or record by electronic means, another,  
37 identifiable person who may be in a state of full or partial undress,  
38 for the purpose of viewing the body of, or the undergarments worn  
39 by, that other person, without the consent or knowledge of that  
40 other person, in the interior of a bedroom, bathroom, changing

1 room, fitting room, dressing room, or tanning booth, or the interior  
2 of any other area in which that other person has a reasonable  
3 expectation of privacy, with the intent to invade the privacy of that  
4 other person.

5 (B) Neither of the following is a defense to the crime specified  
6 in this paragraph:

7 (i) The defendant was a cohabitant, landlord, tenant, cotenant,  
8 employer, employee, or business partner or associate of the victim,  
9 or an agent of any of these.

10 (ii) The victim was not in a state of full or partial undress.

11 (4) (A) Any person who intentionally distributes the image of  
12 the intimate body part or parts of another identifiable person, or  
13 an image of the person depicted engaged in an act of sexual  
14 intercourse, sodomy, oral copulation, sexual penetration, or an  
15 image of masturbation by the person depicted or in which the  
16 person depicted participates, under circumstances in which the  
17 persons agree or understand that the image shall remain private,  
18 the person distributing the image knows or should know that  
19 distribution of the image will cause serious emotional distress, and  
20 the person depicted suffers that distress.

21 (B) A person intentionally distributes an image described in  
22 subparagraph (A) when he or she personally distributes the image,  
23 or arranges, specifically requests, or intentionally causes another  
24 person to distribute that image.

25 (C) As used in this paragraph, “intimate body part” means any  
26 portion of the genitals, the anus, and in the case of a female, also  
27 includes any portion of the breasts below the top of the areola, that  
28 is either uncovered or clearly visible through clothing.

29 (D) It shall not be a violation of this paragraph to distribute an  
30 image described in subparagraph (A) if any of the following  
31 applies:

32 (i) The distribution is made in the course of reporting an  
33 unlawful activity.

34 (ii) The distribution is made in compliance with a subpoena or  
35 other court order for use in a legal proceeding.

36 (iii) The distribution is made in the course of a lawful public  
37 proceeding.

38 (5) Nothing in this subdivision precludes punishment under any  
39 section of law providing for greater punishment.

1 (k) In any accusatory pleading charging a violation of  
2 subdivision (b), if the defendant has been once previously convicted  
3 of a violation of that subdivision, the previous conviction shall be  
4 charged in the accusatory pleading. If the previous conviction is  
5 found to be true by the jury, upon a jury trial, or by the court, upon  
6 a court trial, or is admitted by the defendant, the defendant shall  
7 be imprisoned in a county jail for a period of not less than 45 days  
8 and shall not be eligible for release upon completion of sentence,  
9 on probation, on parole, on work furlough or work release, or on  
10 any other basis until he or she has served a period of not less than  
11 45 days in a county jail. In all cases in which probation is granted,  
12 the court shall require as a condition thereof that the person be  
13 confined in a county jail for at least 45 days. In no event does the  
14 court have the power to absolve a person who violates this  
15 subdivision from the obligation of spending at least 45 days in  
16 confinement in a county jail.

17 In any accusatory pleading charging a violation of subdivision  
18 (b), if the defendant has been previously convicted two or more  
19 times of a violation of that subdivision, each of these previous  
20 convictions shall be charged in the accusatory pleading. If two or  
21 more of these previous convictions are found to be true by the jury,  
22 upon a jury trial, or by the court, upon a court trial, or are admitted  
23 by the defendant, the defendant shall be imprisoned in a county  
24 jail for a period of not less than 90 days and shall not be eligible  
25 for release upon completion of sentence, on probation, on parole,  
26 on work furlough or work release, or on any other basis until he  
27 or she has served a period of not less than 90 days in a county jail.  
28 In all cases in which probation is granted, the court shall require  
29 as a condition thereof that the person be confined in a county jail  
30 for at least 90 days. In no event does the court have the power to  
31 absolve a person who violates this subdivision from the obligation  
32 of spending at least 90 days in confinement in a county jail.

33 In addition to any punishment prescribed by this section, a court  
34 may suspend, for not more than 30 days, the privilege of the person  
35 to operate a motor vehicle pursuant to Section 13201.5 of the  
36 Vehicle Code for any violation of subdivision (b) that was  
37 committed within 1,000 feet of a private residence and with the  
38 use of a vehicle. In lieu of the suspension, the court may order a  
39 person's privilege to operate a motor vehicle restricted, for not  
40 more than six months, to necessary travel to and from the person's

1 place of employment or education. If driving a motor vehicle is  
2 necessary to perform the duties of the person's employment, the  
3 court may also allow the person to drive in that person's scope of  
4 employment.

5 (l) (1) A second or subsequent violation of subdivision (j) is  
6 punishable by imprisonment in a county jail not exceeding one  
7 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
8 by both that fine and imprisonment.

9 (2) If the victim of a violation of subdivision (j) was a minor at  
10 the time of the offense, the violation is punishable by imprisonment  
11 in a county jail not exceeding one year, or by a fine not exceeding  
12 two thousand dollars (\$2,000), or by both that fine and  
13 imprisonment.

14 *SEC. 1.5. Section 647 of the Penal Code is amended to read:*

15 647. Except as provided in subdivision ~~(t)~~, (l) or (m), every  
16 person who commits any of the following acts is guilty of  
17 disorderly conduct, a misdemeanor:

18 (a) Who solicits anyone to engage in or who engages in lewd  
19 or dissolute conduct in any public place or in any place open to  
20 the public or exposed to public view.

21 (b) Who solicits or who agrees to engage in or who engages in  
22 any act of prostitution. A person agrees to engage in an act of  
23 prostitution when, with specific intent to so engage, he or she  
24 manifests an acceptance of an offer or solicitation to so engage,  
25 regardless of whether the offer or solicitation was made by a person  
26 who also possessed the specific intent to engage in prostitution.  
27 No agreement to engage in an act of prostitution shall constitute  
28 a violation of this subdivision unless some act, in addition to the  
29 agreement, is done within this state in furtherance of the  
30 commission of an act of prostitution by the person agreeing to  
31 engage in that act. As used in this subdivision, "prostitution"  
32 includes any lewd act between persons for money or other  
33 consideration.

34 (c) Who accosts other persons in any public place or in any  
35 place open to the public for the purpose of begging or soliciting  
36 alms.

37 (d) Who loiters in or about any toilet open to the public for the  
38 purpose of engaging in or soliciting any lewd or lascivious or any  
39 unlawful act.

1 (e) Who lodges in any building, structure, vehicle, or place,  
2 whether public or private, without the permission of the owner or  
3 person entitled to the possession or in control of it.

4 (f) Who is found in any public place under the influence of  
5 intoxicating liquor, any drug, controlled substance, toluene, or any  
6 combination of any intoxicating liquor, drug, controlled substance,  
7 or toluene, in a condition that he or she is unable to exercise care  
8 for his or her own safety or the safety of others, or by reason of  
9 his or her being under the influence of intoxicating liquor, any  
10 drug, controlled substance, toluene, or any combination of any  
11 intoxicating liquor, drug, or toluene, interferes with or obstructs  
12 or prevents the free use of any street, sidewalk, or other public  
13 way.

14 (g) When a person has violated subdivision (f), a peace officer,  
15 if he or she is reasonably able to do so, shall place the person, or  
16 cause him or her to be placed, in civil protective custody. The  
17 person shall be taken to a facility, designated pursuant to Section  
18 5170 of the Welfare and Institutions Code, for the 72-hour  
19 treatment and evaluation of inebriates. A peace officer may place  
20 a person in civil protective custody with that kind and degree of  
21 force which would be lawful were he or she effecting an arrest for  
22 a misdemeanor without a warrant. A person who has been placed  
23 in civil protective custody shall not thereafter be subject to any  
24 criminal prosecution or juvenile court proceeding based on the  
25 facts giving rise to this placement. This subdivision shall not apply  
26 to the following persons:

27 (1) Any person who is under the influence of any drug, or under  
28 the combined influence of intoxicating liquor and any drug.

29 (2) Any person who a peace officer has probable cause to believe  
30 has committed any felony, or who has committed any misdemeanor  
31 in addition to subdivision (f).

32 (3) Any person who a peace officer in good faith believes will  
33 attempt escape or will be unreasonably difficult for medical  
34 personnel to control.

35 (h) Who loiters, prowls, or wanders upon the private property  
36 of another, at any time, without visible or lawful business with the  
37 owner or occupant. As used in this subdivision, “loiter” means to  
38 delay or linger without a lawful purpose for being on the property  
39 and for the purpose of committing a crime as opportunity may be  
40 discovered.



1 (i) Who, while loitering, prowling, or wandering upon the private  
2 property of another, at any time, peeks in the door or window of  
3 any inhabited building or structure, without visible or lawful  
4 business with the owner or occupant.

5 (j) (1) Any person who looks through a hole or opening, into,  
6 or otherwise views, by means of any instrumentality, including,  
7 but not limited to, a periscope, telescope, binoculars, camera,  
8 motion picture camera, camcorder, or mobile phone, the interior  
9 of a bedroom, bathroom, changing room, fitting room, dressing  
10 room, or tanning booth, or the interior of any other area in which  
11 the occupant has a reasonable expectation of privacy, with the  
12 intent to invade the privacy of a person or persons inside. This  
13 subdivision shall not apply to those areas of a private business  
14 used to count currency or other negotiable instruments.

15 (2) Any person who uses a concealed camcorder, motion picture  
16 camera, or photographic camera of any type, to secretly videotape,  
17 film, photograph, or record by electronic means, another,  
18 identifiable person under or through the clothing being worn by  
19 that other person, for the purpose of viewing the body of, or the  
20 undergarments worn by, that other person, without the consent or  
21 knowledge of that other person, with the intent to arouse, appeal  
22 to, or gratify the lust, passions, or sexual desires of that person and  
23 invade the privacy of that other person, under circumstances in  
24 which the other person has a reasonable expectation of privacy.

25 (3) (A) Any person who uses a concealed camcorder, motion  
26 picture camera, or photographic camera of any type, to secretly  
27 videotape, film, photograph, or record by electronic means, another,  
28 identifiable person who may be in a state of full or partial undress,  
29 for the purpose of viewing the body of, or the undergarments worn  
30 by, that other person, without the consent or knowledge of that  
31 other person, in the interior of a bedroom, bathroom, changing  
32 room, fitting room, dressing room, or tanning booth, or the interior  
33 of any other area in which that other person has a reasonable  
34 expectation of privacy, with the intent to invade the privacy of that  
35 other person.

36 (B) Neither of the following is a defense to the crime specified  
37 in this paragraph:

38 (i) The defendant was a cohabitant, landlord, tenant, cotenant,  
39 employer, employee, or business partner or associate of the victim,  
40 or an agent of any of these.

1 (ii) The victim was not in a state of full or partial undress.

2 (4) (A) Any person who ~~photographs or records by any means~~  
3 *intentionally distributes* the image of the intimate body part or  
4 parts of another identifiable person, ~~under circumstances where~~  
5 *the parties or an image of the person depicted engaged in an act*  
6 *of sexual intercourse, sodomy, oral copulation, sexual penetration,*  
7 *or an image of masturbation by the person depicted or in which*  
8 *the person depicted participates, under circumstances in which*  
9 *the persons agree or understand that the image shall remain private,*  
10 *and the person subsequently distributes the image taken, with the*  
11 *intent to distributing the image knows or should know that*  
12 *distribution of the image will cause serious emotional distress, and*  
13 *the depicted person depicted suffers serious emotional that distress.*

14 (B) A person intentionally distributes an image described in  
15 subparagraph (A) when he or she personally distributes the image,  
16 or arranges, specifically requests, or intentionally causes another  
17 person to distribute that image.

18 ~~(B)~~

19 (C) As used in this paragraph, ~~intimate~~ “intimate body part  
20 part” means any portion of the genitals, *the anus*, and in the case  
21 of a female, also includes any portion of the breasts below the top  
22 of the areola, that is either uncovered or *clearly* visible through  
23 ~~less than fully opaque~~ clothing.

24 (D) It shall not be a violation of this paragraph to distribute an  
25 image described in subparagraph (A) if any of the following  
26 applies:

27 (i) The distribution is made in the course of reporting an  
28 unlawful activity.

29 (ii) The distribution is made in compliance with a subpoena or  
30 other court order for use in a legal proceeding.

31 (iii) The distribution is made in the course of a lawful public  
32 proceeding.

33 ~~(C)~~

34 (5) Nothing in this subdivision precludes punishment under any  
35 section of law providing for greater punishment.

36 (k) (1) In any accusatory pleading charging a violation of  
37 subdivision (b), if the defendant has been once previously convicted  
38 of a violation of that subdivision, the previous conviction shall be  
39 charged in the accusatory pleading. If the previous conviction is  
40 found to be true by the jury, upon a jury trial, or by the court, upon

1 a court trial, or is admitted by the defendant, the defendant shall  
2 be imprisoned in a county jail for a period of not less than 45 days  
3 and shall not be eligible for release upon completion of sentence,  
4 on probation, on parole, on work furlough or work release, or on  
5 any other basis until he or she has served a period of not less than  
6 45 days in a county jail. In all cases in which probation is granted,  
7 the court shall require as a condition thereof that the person be  
8 confined in a county jail for at least 45 days. In no event does the  
9 court have the power to absolve a person who violates this  
10 subdivision from the obligation of spending at least 45 days in  
11 confinement in a county jail.

12 (2) In any accusatory pleading charging a violation of  
13 subdivision (b), if the defendant has been previously convicted  
14 two or more times of a violation of that subdivision, each of these  
15 previous convictions shall be charged in the accusatory pleading.  
16 If two or more of these previous convictions are found to be true  
17 by the jury, upon a jury trial, or by the court, upon a court trial, or  
18 are admitted by the defendant, the defendant shall be imprisoned  
19 in a county jail for a period of not less than 90 days and shall not  
20 be eligible for release upon completion of sentence, on probation,  
21 on parole, on work furlough or work release, or on any other basis  
22 until he or she has served a period of not less than 90 days in a  
23 county jail. In all cases in which probation is granted, the court  
24 shall require as a condition thereof that the person be confined in  
25 a county jail for at least 90 days. In no event does the court have  
26 the power to absolve a person who violates this subdivision from  
27 the obligation of spending at least 90 days in confinement in a  
28 county jail.

29 (3) In addition to any punishment prescribed by this section, a  
30 court may suspend, for not more than 30 days, the privilege of the  
31 person to operate a motor vehicle pursuant to Section 13201.5 of  
32 the Vehicle Code for any violation of subdivision (b) that was  
33 committed within 1,000 feet of a private residence and with the  
34 use of a vehicle. In lieu of the suspension, the court may order a  
35 person's privilege to operate a motor vehicle restricted, for not  
36 more than six months, to necessary travel to and from the person's  
37 place of employment or education. If driving a motor vehicle is  
38 necessary to perform the duties of the person's employment, the  
39 court may also allow the person to drive in that person's scope of  
40 employment.

1 (l) (1) A second or subsequent violation of subdivision (j) is  
2 punishable by imprisonment in a county jail not exceeding one  
3 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
4 by both that fine and imprisonment.

5 (2) If the victim of a violation of subdivision (j) was a minor at  
6 the time of the offense, the violation is punishable by imprisonment  
7 in a county jail not exceeding one year, or by a fine not exceeding  
8 two thousand dollars (\$2,000), or by both that fine and  
9 imprisonment.

10 (m) *If a person violates subdivision (b) and the person who was*  
11 *solicited by, or who agreed to engage in or engaged in any act of*  
12 *prostitution with, that person was a minor at the time of the offense,*  
13 *the violation is punishable by imprisonment in a county jail not*  
14 *exceeding one year, or by a fine not exceeding two thousand dollars*  
15 *(\$2,000), or by both that fine and imprisonment.*

16 SEC. 1.7. Section 647 of the Penal Code is amended to read:

17 647. Except as provided in subdivision (l), every person who  
18 commits any of the following acts is guilty of disorderly conduct,  
19 a misdemeanor:

20 (a) Who solicits anyone to engage in or who engages in lewd  
21 or dissolute conduct in any public place or in any place open to  
22 the public or exposed to public view.

23 (b) Who solicits or who agrees to engage in or who engages in  
24 any act of prostitution. A person agrees to engage in an act of  
25 prostitution when, with specific intent to so engage, he or she  
26 manifests an acceptance of an offer or solicitation to so engage,  
27 regardless of whether the offer or solicitation was made by a person  
28 who also possessed the specific intent to engage in prostitution.  
29 No agreement to engage in an act of prostitution shall constitute  
30 a violation of this subdivision unless some act, in addition to the  
31 agreement, is done within this state in furtherance of the  
32 commission of an act of prostitution by the person agreeing to  
33 engage in that act. As used in this subdivision, "prostitution"  
34 includes any lewd act between persons for money or other  
35 consideration.

36 (c) Who accosts other persons in any public place or in any  
37 place open to the public for the purpose of begging or soliciting  
38 alms.

1 (d) Who loiters in or about any toilet open to the public for the  
2 purpose of engaging in or soliciting any lewd or lascivious or any  
3 unlawful act.

4 (e) Who lodges in any building, structure, vehicle, or place,  
5 whether public or private, without the permission of the owner or  
6 person entitled to the possession or in control of it.

7 (f) Who is found in any public place under the influence of  
8 intoxicating liquor, any drug, controlled substance, toluene, or any  
9 combination of any intoxicating liquor, drug, controlled substance,  
10 or toluene, in a condition that he or she is unable to exercise care  
11 for his or her own safety or the safety of others, or by reason of  
12 his or her being under the influence of intoxicating liquor, any  
13 drug, controlled substance, toluene, or any combination of any  
14 intoxicating liquor, drug, or toluene, interferes with or obstructs  
15 or prevents the free use of any street, sidewalk, or other public  
16 way.

17 (g) When a person has violated subdivision (f), a peace officer,  
18 if he or she is reasonably able to do so, shall place the person, or  
19 cause him or her to be placed, in civil protective custody. The  
20 person shall be taken to a facility, designated pursuant to Section  
21 5170 of the Welfare and Institutions Code, for the 72-hour  
22 treatment and evaluation of inebriates. A peace officer may place  
23 a person in civil protective custody with that kind and degree of  
24 force which would be lawful were he or she effecting an arrest for  
25 a misdemeanor without a warrant. A person who has been placed  
26 in civil protective custody shall not thereafter be subject to any  
27 criminal prosecution or juvenile court proceeding based on the  
28 facts giving rise to this placement. This subdivision shall not apply  
29 to the following persons:

30 (1) Any person who is under the influence of any drug, or under  
31 the combined influence of intoxicating liquor and any drug.

32 (2) Any person who a peace officer has probable cause to believe  
33 has committed any felony, or who has committed any misdemeanor  
34 in addition to subdivision (f).

35 (3) Any person who a peace officer in good faith believes will  
36 attempt escape or will be unreasonably difficult for medical  
37 personnel to control.

38 (h) Who loiters, prowls, or wanders upon the private property  
39 of another, at any time, without visible or lawful business with the  
40 owner or occupant. As used in this subdivision, “loiter” means to

1 delay or linger without a lawful purpose for being on the property  
2 and for the purpose of committing a crime as opportunity may be  
3 discovered.

4 (i) Who, while loitering, prowling, or wandering upon the private  
5 property of another, at any time, peeks in the door or window of  
6 any inhabited building or structure, without visible or lawful  
7 business with the owner or occupant.

8 (j) (1) Any person who looks through a hole or opening, into,  
9 or otherwise views, by means of any instrumentality, including,  
10 but not limited to, a periscope, telescope, binoculars, camera,  
11 motion picture camera, camcorder, or mobile phone, the interior  
12 of a bedroom, bathroom, changing room, fitting room, dressing  
13 room, or tanning booth, or the interior of any other area in which  
14 the occupant has a reasonable expectation of privacy, with the  
15 intent to invade the privacy of a person or persons inside. This  
16 subdivision shall not apply to those areas of a private business  
17 used to count currency or other negotiable instruments.

18 (2) Any person who uses a concealed camcorder, motion picture  
19 camera, or photographic camera of any type, to secretly videotape,  
20 film, photograph, or record by electronic means, another,  
21 identifiable person under or through the clothing being worn by  
22 that other person, for the purpose of viewing the body of, or the  
23 undergarments worn by, that other person, without the consent or  
24 knowledge of that other person, with the intent to arouse, appeal  
25 to, or gratify the lust, passions, or sexual desires of that person and  
26 invade the privacy of that other person, under circumstances in  
27 which the other person has a reasonable expectation of privacy.

28 (3) (A) Any person who uses a concealed camcorder, motion  
29 picture camera, or photographic camera of any type, to secretly  
30 videotape, film, photograph, or record by electronic means, another,  
31 identifiable person who may be in a state of full or partial undress,  
32 for the purpose of viewing the body of, or the undergarments worn  
33 by, that other person, without the consent or knowledge of that  
34 other person, in the interior of a bedroom, bathroom, changing  
35 room, fitting room, dressing room, or tanning booth, or the interior  
36 of any other area in which that other person has a reasonable  
37 expectation of privacy, with the intent to invade the privacy of that  
38 other person.

39 (B) Neither of the following is a defense to the crime specified  
40 in this paragraph:

1 (i) The defendant was a cohabitant, landlord, tenant, cotenant,  
2 employer, employee, or business partner or associate of the victim,  
3 or an agent of any of these.

4 (ii) The victim was not in a state of full or partial undress.

5 (4) (A) Any person who ~~photographs or records by any means~~  
6 *intentionally distributes* the image of the intimate body part or  
7 parts of another identifiable person, ~~under circumstances where~~  
8 ~~the parties~~ *or an image of the person depicted engaged in an act*  
9 *of sexual intercourse, sodomy, oral copulation, sexual penetration,*  
10 *or an image of masturbation by the person depicted or in which*  
11 *the person depicted participates, under circumstances in which*  
12 *the persons agree or understand that the image shall remain private,*  
13 ~~and the person subsequently distributes the image taken, with the~~  
14 ~~intent to distributing the image knows or should know that~~  
15 *distribution of the image will cause serious emotional distress, and*  
16 ~~the depicted person depicted suffers serious emotional that distress.~~

17 (B) *A person intentionally distributes an image described in*  
18 *subparagraph (A) when he or she personally distributes the image,*  
19 *or arranges, specifically requests, or intentionally causes another*  
20 *person to distribute that image.*

21 ~~(B)~~

22 (C) As used in this paragraph, ~~intimate~~ “*intimate body part*  
23 *part*” means any portion of the genitals, *the anus* and in the case  
24 of a female, also includes any portion of the breasts below the top  
25 of the areola, that is either uncovered or *clearly visible through*  
26 ~~less than fully opaque clothing.~~

27 (D) *It shall not be a violation of this paragraph to distribute an*  
28 *image described in subparagraph (A) if any of the following*  
29 *applies:*

30 (i) *The distribution is made in the course of reporting an*  
31 *unlawful activity.*

32 (ii) *The distribution is made in compliance with a subpoena or*  
33 *other court order for use in a legal proceeding.*

34 (iii) *The distribution is made in the course of a lawful public*  
35 *proceeding.*

36 ~~(C)~~

37 (5) ~~Nothing in this~~ *This subdivision precludes shall not preclude*  
38 *punishment under any section of law providing for greater*  
39 *punishment.*

1 (k) In any accusatory pleading charging a violation of  
2 subdivision (b), if the defendant has been once previously convicted  
3 of a violation of that subdivision, the previous conviction shall be  
4 charged in the accusatory pleading. If the previous conviction is  
5 found to be true by the jury, upon a jury trial, or by the court, upon  
6 a court trial, or is admitted by the defendant, the defendant shall  
7 be imprisoned in a county jail for a period of not less than 45 days  
8 and shall not be eligible for release upon completion of sentence,  
9 on probation, on parole, on work furlough or work release, or on  
10 any other basis until he or she has served a period of not less than  
11 45 days in a county jail. In all cases in which probation is granted,  
12 the court shall require as a condition thereof that the person be  
13 confined in a county jail for at least 45 days. In no event does the  
14 court have the power to absolve a person who violates this  
15 subdivision from the obligation of spending at least 45 days in  
16 confinement in a county jail.

17 In any accusatory pleading charging a violation of subdivision  
18 (b), if the defendant has been previously convicted two or more  
19 times of a violation of that subdivision, each of these previous  
20 convictions shall be charged in the accusatory pleading. If two or  
21 more of these previous convictions are found to be true by the jury,  
22 upon a jury trial, or by the court, upon a court trial, or are admitted  
23 by the defendant, the defendant shall be imprisoned in a county  
24 jail for a period of not less than 90 days and shall not be eligible  
25 for release upon completion of sentence, on probation, on parole,  
26 on work furlough or work release, or on any other basis until he  
27 or she has served a period of not less than 90 days in a county jail.  
28 In all cases in which probation is granted, the court shall require  
29 as a condition thereof that the person be confined in a county jail  
30 for at least 90 days. In no event does the court have the power to  
31 absolve a person who violates this subdivision from the obligation  
32 of spending at least 90 days in confinement in a county jail.

33 In addition to any punishment prescribed by this section, a court  
34 may suspend, for not more than 30 days, the privilege of the person  
35 to operate a motor vehicle pursuant to Section 13201.5 of the  
36 Vehicle Code for any violation of subdivision (b) that was  
37 committed within 1,000 feet of a private residence and with the  
38 use of a vehicle. In lieu of the suspension, the court may order a  
39 person's privilege to operate a motor vehicle restricted, for not  
40 more than six months, to necessary travel to and from the person's



1 place of employment or education. If driving a motor vehicle is  
2 necessary to perform the duties of the person's employment, the  
3 court may also allow the person to drive in that person's scope of  
4 employment.

5 (l) (1) A second or subsequent violation of subdivision (j) is  
6 punishable by imprisonment in a county jail not exceeding one  
7 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
8 by both that fine and imprisonment.

9 (2) If the victim of a violation of subdivision (j) was a minor at  
10 the time of the offense, the violation is punishable by imprisonment  
11 in a county jail not exceeding one year, or by a fine not exceeding  
12 two thousand dollars (\$2,000), or by both that fine and  
13 imprisonment.

14 (m) (1) *If a crime is committed in violation of subdivision (b)*  
15 *and the person who was solicited was a minor at the time of the*  
16 *offense, and if the defendant knew or should have known that the*  
17 *person who was solicited was a minor at the time of the offense,*  
18 *the violation is punishable by imprisonment in a county jail for*  
19 *not less than two days and not more than one year, or by a fine*  
20 *not exceeding ten thousand dollars (\$10,000), or by both that fine*  
21 *and imprisonment.*

22 (2) *The court may, in unusual cases, when the interests of justice*  
23 *are best served, reduce or eliminate the mandatory two days of*  
24 *imprisonment in a county jail required by this subdivision. If the*  
25 *court reduces or eliminates the mandatory two days' imprisonment,*  
26 *the court shall specify the reason on the record.*

27 SEC. 2. (a) *Section 1.5 of this bill incorporates amendments*  
28 *to Section 647 of the Penal Code proposed by both this bill and*  
29 *Assembly Bill 1791. It shall only become operative if (1) both bills*  
30 *are enacted and become effective on or before January 1, 2015,*  
31 *(2) each bill amends Section 647 of the Penal Code, (3) Senate*  
32 *Bill 1388 is not enacted, as enacted does not amend that section,*  
33 *or Assembly Bill 1791 is enacted after Senate Bill 1388, and (4)*  
34 *this bill is enacted after Assembly Bill 1791, in which case Sections*  
35 *1 and 1.7 of this bill shall not become operative.*

36 (b) *Section 1.7 of this bill incorporates amendments to Section*  
37 *647 of the Penal Code proposed by both this bill and Senate Bill*  
38 *1388. It shall only become operative if (1) both bills are enacted*  
39 *and become effective on or before January 1, 2015, (2) each bill*  
40 *amends Section 647 of the Penal Code, (3) Assembly Bill 1791 is*

1 *not enacted, as enacted does not amend that section, or Senate*  
2 *Bill 1388 is enacted after Assembly Bill 1791, and (4) this bill is*  
3 *enacted after Senate Bill 1388 in which case Sections 1 and 1.5*  
4 *of this bill shall not become operative.*

5 ~~SEC. 2.~~

6 SEC. 3. No reimbursement is required by this act pursuant to  
7 Section 6 of Article XIII B of the California Constitution because  
8 the only costs that may be incurred by a local agency or school  
9 district will be incurred because this act creates a new crime or  
10 infraction, eliminates a crime or infraction, or changes the penalty  
11 for a crime or infraction, within the meaning of Section 17556 of  
12 the Government Code, or changes the definition of a crime within  
13 the meaning of Section 6 of Article XIII B of the California  
14 Constitution.